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March 12, 1976

To: House Subcommittee on International Organizations  
Attention: Mr. Boettcher

From: American Law Division

Subject: Statutes Affecting Domestic Activities of Foreign Agents

Reference is made to your inquiry of March 8, 1976, requesting information on the above matter. Specifically, you ask for reference to and explanation of federal laws regulating the conduct of foreign agents, including registration requirements and political campaign contributions.

There currently exist three statutory schemes designed to identify and control the agents of a foreign power. All are bolstered by penal sanctions.

1. Section 951, title 18, United States Code, makes it a federal crime for any person, other than a diplomatic or consular officer or attache, to act in the United States as an agent of a foreign government without prior notification to the Secretary of State. Violations of this section may be punished by up to 10 years imprisonment or \$5,000 fine, or both.

The term "agent" is not defined. It has been held that a contractual relationship between a defense plant employee and the Soviet Government was not necessary to make the employee who passed defense

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information to members Soviet United Nations Mission an "agent" of the Soviet Government within the meaning of section 951. "...a contractual relationship is unnecessary, since the act itself does not define the word 'agent'. The few judicial decisions in the field do not discuss the definition in any detail. The cases assume that it means one who acts directly or indirectly for the benefit of a foreign government." United States v. Butenko, 384 F. 2d 554, 565-566 (3rd Cir. 1967), vacated on other grounds, 394 U.S. 165 (1969) (Emphasis supplied.)

The term "foreign government" is defined at 18 U.S.C.A. 11 to include any government, faction, or body of insurgents within a country with which the United States is at peace, irrespective of recognition by the United States.

The constitutionality of the act has been sustained over objections that the requirement of registration is in violation of the constitutional privilege against self-incrimination. "...the statutory requirement of registration...was not unconstitutional, because the statute concerned future acts, and the constitutional protection covered only past deeds." United States v. Melekh, 193 F. Supp. 586, 591, 592 (N.D. Ill. 1961).

The court in that case further found

"...no inconsistency between 18 U.S.C. §951, making it a criminal offense punishable by not more than \$5,000 and/or ten years, for one to act as an agent of a foreign government without prior notification to the Secretary of State, and 22 U.S.C.A. § 612(a) which requires every person who becomes an agent of a foreign principal to register with the Attorney General within ten days after becoming such agent, and prescribes

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a \$10,000 and/or five-year penalty. The one could be for the purpose of clarification of diplomatic ramifications and the other for security measures. The registering officials are different; the times are different. Nor is the difference in prescribed time for registration necessarily incompatible. Furthermore, as is pointed out by the Government, Section 13 of the Foreign Agents Registration Act provided that

'This Act is in addition to and not in substitution for any other existing statute.'  
22 U.S.C.A. p. 234.

Finally, because of the later date of enactment of the Criminal Code, Section 951 of Title 18 was in fact enacted later than 22 U.S.C.A. § 612." Id., at 591.

2. Section 219, title 18, United States Code, makes it a criminal offense punishable by not more than \$10,000 and or two years, for any person who, being an officer or employee of the United States in the executive, legislative, or judicial branch of the government or in any agency of the United States, including the District of Columbia, is or acts as an agent of a foreign principal required to register under 22 U.S.C. 612.

The terms used in section 219 will be examined later.

There are no reported decision under this section. The House Report (No. 1470, 89th Cong., 2d Sess.) on the legislation proposing section 219 contains the following relevant comments:

10. Officers and employees of the U. S. Government are prohibited from acting as agents of foreign principals. Contract or part-time employees of the Federal Government may act as agents of foreign principals if the head of the employing agency certifies that such employment is in the national interest and a copy of the certification is placed in the public file of the agent maintained by the Department of Justice.

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Section 8(b) would amend chapter 11 of the United States Code, title 18, by adding a new section relating to conflicts of interest involving foreign agents.

The new section would make it a felony for any agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938 to act as an officer or employee of the U. S. Government or any agency thereof.

The section would except from its prohibition any agent whose employment was certified as required in the national interest by the head of the employing agency. Any such certificate would be made a part of the public records relating to the agent on file with the Department of Justice.

1966 U.S. Code Cong. & Adm. News 2397, 2411, 2399.

3. The Foreign Agents Registration Act, 22 U.S.C.A. 611-621, imposes severe criminal sanctions on any person who acts as an agent of a foreign principal within the United States unless he files a certified registration statement with the Attorney General. Moreover, "[t]he obligation of an agent of a foreign principal to file a registration statement shall, after the tenth day of his becoming such agent, continue from day to day, and termination of such status shall not relieve such agent from his obligation to file a registration statement for the period during which he was an agent of a foreign principal." 22 U.S.C.A. 612 (Supp.). The registration statement elicits a host details including particulars concerning the agreement with the foreign principal and any activities under the foreign principal-agent relationship. See 22 U.S.C.A. 612 for the complete list of information required to appear on the registration statement. In particular, the registration statement shall detail:

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"money and other things of value spent or disposed of by the registrant during the preceding sixty days in furtherance of or in connection with activities which require his registration hereunder and which have been undertaken by him either as an agent of a foreign principal or for himself or any other person or in connection [sic] with any activities relating to his becoming an agent of such principal, and a detailed statement of any contributions the making of which is prohibited under the terms of section 613 of Title 18) in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office. 22 U.S.C.A. 612(a)(8)(Supp.). (Emphasis added).

The terms "agent of a foreign principal" and "foreign principal" are defined broadly, viz:

(b) The term "foreign principal" includes—

(1) a government of a foreign country and a foreign political party;

(2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

(3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(c) Except as provided in subsection (d) of this section, the term "agent of a foreign principal" means—

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—

(i) engages within the United States in political activities for or in the interests of such foreign principal;

(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

(iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and

(2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.

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(d) The term "agent of a foreign principal" does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 3611 of Title 39, published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in subsection (b) of this section, or by any agent of a foreign principal required to register under this subchapter;

22 U.S.C.A. 611 (supp.)

Section 613 contains various exemptions from the registration requirement, e.g., a duly accredited diplomatic or consular office of a foreign government, any person engaging or agreeing to engage solely in activities in furtherance of bona fide religious, scholastic, academic or scientific pursuits or of the fine arts, and any person qualified to practice law insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court or any agency of the United States.

Section 614(a) provides that persons required to register who transmit or cause to be transmitted any political propaganda (see 22 U.S.C.A. 611(j)) must send, within forty-eight hours, copies of such propaganda to the Attorney General, along with a statement as to the times, places, and extent of such transmittal.

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Section 615 requires every registered agent of a foreign principal to keep books of account and written records of his activities. The Attorney General may inspect these books at all reasonable times. It is a crime to willfully conceal, destroy, mutilate, or falsify such books or records or attempt to do so.

Section 617 provides that each officer or director, or person performing the functions of an officer or director, of an agent of a foreign principal which is not an individual is obligated to cause such agent to file a registration statement and to comply with the requirements of Section 614 (political propaganda) and all other requirements of the Act. In the case of the failure of any such agent of a foreign principal to comply, each of its officers and directors is subject to prosecution.

Section 618 authorizes substantial penalties for violation of the Act's requirements.

As described recently, "[t]he purpose of the Act is to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature. These disclosures offer the Government and our people the opportunity to be informed and therefore enable them to understand the purposes for which they act." Attorney General v. Irish Northern Aid Committees, 346 F. Supp. 1384, 1390 (S.D.N.Y. 1972).

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The Act "is founded upon the indisputable power of the Government to conduct its foreign relations and to provide for the national defense and so falls within the inherent regulatory power of the Congress.... What is more fundamental...than the authority to require every person acting as an 'agent' of a foreign principal to file comprehensive information showing his agency activities." Ibid.

4. 18 U.S.C. 613 makes it a crime for a foreign national to make contributions to any election:

Whoever, being a foreign national, directly or through any other person knowingly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or

Whoever knowingly solicits, accepts, or receives any such contribution from any such foreign national—


Shall be fined not more than \$25,000 or imprisoned not more than five years or both.

As used in this section, the term "foreign national" means

(1) a foreign principal, as such term is defined by section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 (b)), except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

(P.L. 89-486, § 8(a), 80 Stat. 248, as amended by P.L. 93-443, § 101(d)(1)-(3), (4) (A), 88 Stat. 1267.)

  
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